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Written statement* submitted by the Human Rights Advocates Inc., a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[14 February 2015]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Detention of Unaccompanied Minors in Private Facilities

Background

Many Latin American children are entering the United States (U.S.) through Mexico to escape violent situations faced at home. Children in the Americas experience high levels of homicide, lack of opportunities, widespread use of arms, organized crime, gangs, and a culture of impunity.[1] When these children reach the U.S. and become detained, they are often put into private for-profit immigrant detention centers, where many will continue to suffer though overt and institutional violence. This problem also exists in Australia[2] and the U.K.,[3] however this statement focuses on the U.S. situation as an example. Pursuant to the General Assembly's resolution 56/138, a study on violence against children addressed alternative care institutions and correctional detention facilities. The study found that the impact of institutionalization goes beyond the experience by children of violence, and that long-term effects can include severe developmental delays, disability, and irreversible psychological damage.[4] Private detention centers for child immigrants are neither alternative care institutions nor correctional in nature; ;hey comprise a unique set of attributes that require additional safeguards for protecting children from violence. This under-recognized distinction has contributed to the invisibility of violence endured by these children.

The Committee on the Rights of the Child has stated that detention cannot be justified solely on the basis of the child being unaccompanied or separated, or on their migratory status.[5] These children do not belong in prison-like facilities that criminalize them internally and publicly. They pose no security risk, and are especially vulnerable. They arrive to countries traumatized from the violence they are seeking to escape, and from the trauma of their journey to the border. They are being arbitrarily deprived of their liberty, in violation of the Convention on the Rights of the Child and other treaties.

The Committee Against Torture expressed concern at the recent expansion of family detention for undocumented migrant families with children in the U.S. It observed that many unaccompanied and separated children continue to be held in prison-like facilities. It also remains concerned about substandard conditions of immigrant detention facilities, use of solitary confinement, and sexual violence by staff and other detainees. The Committee asked that the U.S. halt the expansion of family detention, with a view to progressively eliminating it. [6]

Private Detention Facilities

The South Texas Family Residential Center (STFRC) is a new immigrant detention center for women and children. The U.S. Immigration and Customs Enforcement Agency has contracted the Corrections Corporation of America (CCA), the U.S.'s largest private prison company, to operate the center. CCA has a record of disregarding inmate safety and

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[1] U.N. Special Rep. of the Sec'y-Gen. on Violence Against Children, SRSG Marta Santos Pais calls for the effective protection of children from violence in the Americas (Dec. 15, 2014), http://srsg.violenceagainstchildren.org/story/2014-12-15_1201

[2] LAW COUNCIL OF AUSTL., SUBMISSION TO NATIONAL INQUIRY INTO CHILDREN IN IMMIGRATION DETENTION 2014, AUSTRALIAN HUMAN RIGHTS COMMISSION (2014).

[3] Jonathan Owen, *Immigrant children still being detained, figures show*, THE INDEPENDENT (Jan. 8, 2015), http://www.independent.co.uk/news/uk/politics/immigrant-children-still-being-detained-figures-show-9966155.html.

[4] Report of the independent expert for the United Nations study on violence against children, ¶ 16, 61st Sess., A/61/299 (Aug. 29, 2006).

[5] U.N. Comm. on the Rights of the Child, General Comment No. 6: Treatment of Unaccompanied and Separated Children Outside their Country of Origin, ¶ 18, 39th Sess., May 17–June 3, 2005, CRC/GC/2005/6 (Sept. 1, 2005).

[6] U.N. Comm. Against Torture, Concluding observations on the combined third to fifth periodic reports of the U.S., ¶ 9, 1276-1277th Sess., Nov. 20, 2014, CAT/C/USA/CO/3-5 (Dec. 19, 2014).

violating federal laws,[7] and the ACLU has reported rampant human rights violations at CCA's immigrant detention facilities.[8] Because of this record, there is concern that CCA will proceed with business as usual at STFRC.

Private immigration detention business has become a lucrative extension of the private prison industrial complex. In 2013, CCA boasted $1.69 billion in total yearly revenue and $473 million in gross yearly profit.[9] If the U.S. stopped mandatory detention of immigrants, companies like CCA would have a major financial crisis. It has been reported that they have spent millions lobbying Congress and the Department of Homeland Security (DHS) for harsher immigration laws in order to build their business and increase profits.[10] Private incarceration has resulted in the commodification of immigrants, including children. For-profit prison management fosters a ripe environment for human rights abuses that violate a number of rights, including the rights to life, health, food, and water, when CCA inevitably cuts corners to save money, the children will suffer.

Poorly maintained private facilities foster substandard living conditions that threaten the health of those in detention. The ACLU reported complaints of temperature extremes, overcrowding, facilities running out of hygiene products, and detainees being given used underwear. Food was spoiled and meager, and the water non-potable.[11] At Hutto Center, a CCA facility that was shut down in 2009, children with a skin infection were not treated until they bled from the rash. One child who was frequently vomiting was not allowed medical attention unless the staff saw the vomit.[12] Detainees experience unreasonable delays in receiving medical care and in the case of people with mental disabilities, punitive rather than care-oriented treatment is given. Lack of adequate medical care has also caused unnecessary deaths.[13]

The HRC has called upon States to ensure proper training of all persons working with children, including prison staff, immigration and border control agents, and policy writers.[14] Private prisons and detention centers are notoriously understaffed[15] and their employees inadequately trained. The ACLU reported verbal and physical abuse and retaliatory behavior from guards, including placing detainees in segregation.[16] The Organization of American States Declaration on violence and exploitation of children calls for the reduction of secondary victimization[17]—behaviors and attitudes of social service providers that are victim-blaming and insensitive, and which traumatize victims of violence who are being served by these agencies.

Normalizing Violence

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[7] Taylor Wofford, *The Operators of America's Largest Immigrant Detention Center Have A History of Inmate Abuse*, NEWSWEEK (Dec. 20, 2014), http://www.newsweek.com/operators-americas-largest-immigrant-detention-center-have-history-inmate-293632.

[8] AM. CIVIL LIBERTIES UNION, PRISONERS OF PROFIT: IMMIGRANTS AND DETENTION IN GEORGIA (2012).

[9] INVESTOR RELATIONS, CORRECTIONS CORP. OF AM., ANNUAL INCOME, http://ir.correctionscorp.com/phoenix.zhtml?c=117983&p=irol-fundIncomeA (last visited Feb. 1, 2015).

[10] Chris Kirkham, *Private Prisons Profit From Immigration Crackdown, Federal And Local Law Enforcement Partnerships*, HUFFINGTON POST (Nov. 26, 2013), http://www.huffingtonpost.com/2012/06/07/private-prisons-immigration-federal-law-enforcement_n_1569219.html.

Azadeh Shahshahani, *The 'sunk costs' of a profit-driven prison system*, ALJAZEERA (May 29, 2012), http://www.aljazeera.com/indepth/opinion/2012/05/20125261128124693 44.html.

[11] ACLU, *supra*.

[12] *Crossing the Border: Immigrants in Detention and Victims of Trafficking: Hearing Before the Subcomm. on Border, Mar., and Global Counterterrorism of the Comm. on Homeland Sec., H.R.*, 110th Cong., 110-16 (2007).

[13] ACLU, *supra*.

[14] Human Rights Council Res. 25/6, Rights of the child: access to justice for children, 25th Sess., Mar. 3-28, 2014, A/HRC/RES/25/6 (April 14, 2014).

[15] Wofford, *supra*.

[16] ACLU, *supra*.

[17] Org. of Am. States [OAS], *Declaration on violence against and exploitation of children*, 2d Plenary Sess., June 4, 2014, OAS Doc. AG/DEC. 76 (XLIV-O/14) (June 10, 2014).

Immigration charges now make up half of all federal arrests, and drug offenses rank second at 15 percent.[18] The U.S.'s 'war on drugs' normalized the prison industrial complex and violent police actions toward African Americans in urban inner cities. Now, the post-9/11 'war on terror' is normalizing the immigration industrial complex and violent police action toward Latin American immigrants at the U.S.-Mexico border; what began as a heightened focus on detaining undocumented immigrants in the interest of curbing terrorism quickly transformed into mass incarceration regardless of whether or not those being detained actually pose a threat to national security. And just as African American children have been absorbed into the former scheme, Latin American immigrant children are now within the latter. Creating immigrant detention centers meant for children normalizes and condones a framework of violence and discrimination against immigrant children. These children suffer structural violence—chronic, historically entrenched political-economic oppression and social inequality. They experience everyday violence, the daily practices of violence on a micro-interactional level: interpersonal, domestic and delinquent.[19] Normalizing this violence concurrently normalizes discrimination, in violation of Convention on the Elimination of all forms of Racial Discrimination.

Accountability and Recommendations

Accountability for violence against children in these detention centers is difficult to achieve because the actors are private businesses. However, their unique social task via government contract blurs private and State responsibility. This issue should be included in national action plans on business and human rights in efforts to implement the Guiding Principles on Business and Human Rights.

HRA recommends that the Council urge:
1. The Special Representative of the Secretary General on violence against children and relevant stakeholders to study the situation of children held in immigrant detention centers operated by private prison companies like CCA; and
2. The Working Group drafting the treaty on Transnational Corporations and Other Business Enterprises with respect to human rights to include private detention businesses in their discussions.

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[18] Mark Motivans, *Fed. Justice Statistics,* BULLETIN, Jan. 2015 (U.S. Dept. of Justice Bureau of Justice Statistics).
[19] Philippe Bourgois, *The Continuum of Violence in War and Peace: Post-Cold War Lessons from El Salvador, IN* VIOLENCE IN WAR AND PEACE 425-426 (Nancy Scheper-Hughes and Philippe Bourgois eds., Blackwell Pub., 2004).